

House Amendment 1358

Amendment Text

PAG LIN

1 1 Amend [House File 577](#) as follows:
1 2 #1. By striking everything after the enacting
1 3 clause, and inserting the following:
1 4 "Section 1. NEW SECTION. 476B.1 DEFINITIONS.
1 5 As used in this chapter, unless the context
1 6 otherwise requires:
1 7 1. "ADAD equipment" means automatic dialing-
1 8 announcing device equipment, which is a device or
1 9 system of devices used, either alone or in conjunction
1 10 with other equipment, for the purpose of automatically
1 11 selecting or dialing telephone numbers, for
1 12 disseminating prerecorded messages to the numbers
1 13 selected or dialed without the use of a live operator.
1 14 2. "Autodialer" means an automatic telephone
1 15 dialing system or equipment that has both the capacity
1 16 to store or produce telephone numbers to be called
1 17 using a random or sequential number generator, and to
1 18 dial such numbers.
1 19 3. "Board" means the utilities board created in
1 20 section 474.1.
1 21 4. "Caller identification" means the display, on
1 22 the call recipient's telephone or related equipment,
1 23 of the caller's telephone number or identity to the
1 24 recipient of the call.
1 25 5. "Consumer" means an actual or prospective
1 26 purchaser, lessee, or recipient of a consumer good or
1 27 service.
1 28 6. "Consumer good or service" means any real
1 29 property or any tangible or intangible personal
1 30 property that is normally used for personal, family,
1 31 or household purposes, including, without limitation,
1 32 any such property intended to be attached to or
1 33 installed in any real property without regard to
1 34 whether it is so attached or installed, as well as
1 35 cemetery lots and timeshare estates, and any service
1 36 related to such property.
1 37 7. "Conversation time" is the time when two-way
1 38 telecommunications is possible during a telephone
1 39 call.
1 40 8. "Doing business in this state" means a business
1 41 that conducts telephone solicitations from a location
1 42 in this state or from other states or nations to
1 43 consumers located in this state.
1 44 9. "Existing business relationship" means an
1 45 established pattern of activity between a consumer and
1 46 a merchant, involving an inquiry, application,
1 47 purchase, or transaction initiated by a consumer
1 48 regarding products or services offered by a merchant.
1 49 10. "Merchant" means a person who, directly or
1 50 indirectly, offers or makes available to a consumer
2 1 any consumer good or service.
2 2 11. "Predictive dialing technology" means an
2 3 automated dialing system or computer software that
2 4 utilizes a formula or similar mechanism to initiate a
2 5 certain greater number of telephone calls than the
2 6 number of telephone solicitors available to speak to
2 7 prospective customers, with a goal of keeping the

2 8 available telephone solicitors continually speaking to
2 9 one prospective customer after another.

2 10 12. "Prepaid calling card" means an object
2 11 containing an access number and authorization code
2 12 that enables an end user to use prepaid calling
2 13 services.

2 14 13. "Prepaid calling card company" means any
2 15 person providing prepaid calling services to the
2 16 public using its own or resold telecommunications
2 17 network.

2 18 14. "Prepaid calling services" means any prepaid
2 19 telecommunications service that allows end users to
2 20 originate calls through an access number and
2 21 authorization code, whether manually or electronically
2 22 dialed.

2 23 15. "Telephone solicitation" means any voice
2 24 communication, wherever originated, transmitted over a
2 25 telephone for the purpose of encouraging action on the
2 26 part of the consumer, including but not limited to any
2 27 of the following actions:

2 28 a. The purchase or rental of property, goods, or
2 29 services.

2 30 b. Investment in property, goods, or services.

2 31 c. Soliciting a sale of a consumer good or
2 32 service.

2 33 d. Offering an extension of credit for a consumer
2 34 good or service.

2 35 e. Obtaining information that will or may be used
2 36 for the direct solicitation of a sale of a consumer
2 37 good or service or an offer of extension of credit for
2 38 such purpose.

2 39 f. Soliciting a donation for any group,
2 40 organization, or purpose.

2 41 16. "Telephone solicitor" means a person doing
2 42 business in this state, who makes or causes to be made
2 43 a telephone solicitation, including, but not limited
2 44 to, calls made by use of automatic dialing-announcing
2 45 device equipment, predictive dialing technology, or an
2 46 autodialer.

2 47 17. "Unsolicited telephone solicitation" means a
2 48 telephone solicitation other than a call made as
2 49 follows:

2 50 a. In response to an express request of the person
3 1 called.

3 2 b. Primarily in connection with an existing debt
3 3 or contract, payment, or performance of which has not
3 4 been completed at the time of such call.

3 5 c. To a person with whom the telephone solicitor
3 6 has an existing business relationship.

3 7 d. To a residential subscriber if the telephone
3 8 solicitation is made on behalf of a not-for-profit
3 9 organization exempt from paying taxes under section
3 10 501(c) of the Internal Revenue Code, and if a bona
3 11 fide member of the exempt organization directly makes
3 12 such communication, and does not contract with a
3 13 telemarketing firm or other third party to make the
3 14 calls.

3 15 e. By a person licensed pursuant to chapter 543B
3 16 who calls an actual or prospective seller or lessor of
3 17 real property if the call is made in response to a
3 18 yard sign or other form of real estate sales
3 19 advertisement placed by the seller or lessor.

3 20 Sec. 2. NEW SECTION. 476B.2 RESTRICTIONS ON THE
3 21 USE OF CERTAIN TELEMARKEETING EQUIPMENT.

3 22 1. A person shall not do any of the following:

3 23 a. Utilize any ADAD equipment, predictive dialing
3 24 technology, or autodialer to call any person

3 25 registered on the do-not-call list maintained pursuant
3 26 to section 476B.3.

3 27 b. Call any person registered on the do-not call
3 28 list maintained pursuant to section 476B.3 while the
3 29 person is performing paid telephone solicitation
3 30 services pursuant to contract, including payment by
3 31 acceptance of a percentage of any charitable donations
3 32 collected by the person while performing telephone
3 33 solicitation services.

3 34 c. Operate any ADAD equipment, predictive dialing
3 35 technology, or autodialers in a manner that
3 36 intentionally impedes or prevents the function of a
3 37 recipient's caller identification if the caller's
3 38 existing equipment is capable of allowing the display
3 39 of the caller's telephone number or identity.

3 40 2. a. Except as provided in paragraph "b", a
3 41 person shall not use, employ, or direct another person
3 42 to use, or contract for the use of, ADAD equipment.

3 43 b. Except for ADAD equipment that randomly or
3 44 sequentially selects the telephone numbers for
3 45 calling, the prohibition in paragraph "a" does not
3 46 apply to any of the following, provided that the
3 47 telephone numbers selected for automatic dialing have
3 48 been screened to exclude any consumer who is included
3 49 on the do-not-call list pursuant to section 476B.3 or
3 50 who has an unlisted telephone number, unless the calls
4 1 made concern a good or service that has been
4 2 previously ordered or purchased:

4 3 (1) Calls made with ADAD equipment by a nonprofit
4 4 organization or by an individual using the calls other
4 5 than for commercial profit-making purposes or fund-
4 6 raising, if the calls do not involve the advertisement
4 7 or offering for sale, lease, or rental of goods,
4 8 services, or property.

4 9 (2) Calls made with ADAD equipment relating to
4 10 payment for, service of, or warranty coverage of
4 11 previously ordered or purchased goods or services or
4 12 to persons or organizations with an existing business
4 13 relationship with the persons or organizations using
4 14 the calls.

4 15 (3) Calls made with ADAD equipment relating to the
4 16 collection of lawful debts.

4 17 (4) Calls made with ADAD equipment to members or
4 18 employees of the organization making the calls.

4 19 (5) Calls made with ADAD equipment that use an
4 20 initial prerecorded message of a duration no greater
4 21 than seven seconds prior to a live operator intercept,
4 22 or calls that involve an initial message from a live
4 23 operator.

4 24 3. Calls made with ADAD equipment must terminate
4 25 the connection with any call within ten seconds after
4 26 the person receiving the call acts to disconnect the
4 27 call.

4 28 4. Calls made with predictive dialing technology
4 29 must meet a standard that allows a live telephone
4 30 solicitor to engage in conversation with a call
4 31 recipient within two seconds after the call is
4 32 answered by the call recipient.

4 33 Sec. 3. NEW SECTION. 476B.3 DO-NOT-CALL LISTING.

4 34 1. The secretary of state shall contract with a
4 35 service that maintains a national do-not-call list, so
4 36 that Iowa telephone subscribers who do not wish to
4 37 receive unsolicited telephone solicitation utilizing
4 38 any ADAD equipment, predictive dialing technology, or
4 39 autodialers may register to be included on the list.
4 40 The contract shall be made in consultation with the
4 41 consumer protection division of the department of

4 42 justice, so that all evidentiary issues and other
4 43 issues related to enforcement are considered.

4 44 2. A residential, mobile, or telephonic paging
4 45 device telephone subscriber who does not wish to
4 46 receive unsolicited telephone solicitations may
4 47 register to be included on the do-not-call list
4 48 contracted for by the secretary of state pursuant to
4 49 subsection 1.

4 50 3. A telephone solicitor doing business in Iowa
5 1 shall pay a fee to be determined pursuant to
5 2 subsection 5, and shall obtain a subscription to
5 3 receive the quarterly updated subscription listings of
5 4 consumers in Iowa who have registered to be included
5 5 on the do-not-call list referred to in this section.

5 6 4. A telephone solicitor shall not make a call
5 7 with any ADAD equipment, predictive dialing
5 8 technology, or autodialer to any consumer in Iowa
5 9 whose name is on the do-not-call list referred to in
5 10 this section.

5 11 5. The secretary of state and consumer protection
5 12 division of the department of justice shall adopt
5 13 rules pursuant to chapter 17A to administer this
5 14 section, including appropriate notices to consumers of
5 15 the types of calls toward which such registration is
5 16 directed, and the charging of a fee for subscriptions
5 17 to the list so that the list income supports the cost
5 18 of maintaining the list.

5 19 Sec. 4. NEW SECTION. 476B.4 TELEPHONE
5 20 SOLICITATION RESTRICTIONS.

5 21 A telephone solicitor who makes a telephone
5 22 solicitation to a residential, mobile, or telephonic
5 23 paging device telephone number shall disclose the
5 24 identity of the telephone solicitor and the business
5 25 on whose behalf the telephone solicitor is making the
5 26 telephone solicitation, immediately upon making
5 27 contact by telephone with the person who is the object
5 28 of the telephone solicitation. The telephone
5 29 solicitor shall also comply with the provisions of 16
5 30 C.F.R. } 310.4 in regard to required disclosures and
5 31 other actions of the telephone solicitor. The
5 32 business employing the telephone solicitor shall also
5 33 comply with the provisions of 16 C.F.R. } 310.5,
5 34 particularly with regard to the use of fictitious
5 35 names by employees and recordkeeping by the business
5 36 regarding such names.

5 37 Sec. 5. NEW SECTION. 476B.5 REQUIREMENTS FOR
5 38 CONTRACTS MADE PURSUANT TO TELEPHONE SOLICITATION.

5 39 1. A contract made pursuant to a telephone
5 40 solicitation is not valid and enforceable against a
5 41 consumer unless made in compliance with this section.

5 42 2. A contract made pursuant to a telephone
5 43 solicitation must satisfy all of the following:

5 44 a. The contract must be reduced to writing and
5 45 signed by the consumer.

5 46 b. The contract must comply with all other
5 47 applicable laws and rules.

5 48 c. The contract must match the description of
5 49 goods or services as principally communicated in the
5 50 telephone solicitation.

6 1 d. The contract must contain the name, address,
6 2 and telephone number of the seller, the total price of
6 3 the contract, and a detailed description of the goods
6 4 or services being sold.

6 5 e. The contract must contain, in bold, conspicuous
6 6 type, immediately preceding the signature, the
6 7 following statement:

6 8 "You are not obligated to pay any money unless you

6 9 sign this contract and return it to the seller."
6 10 f. The contract must not exclude from its terms
6 11 any oral or written representations made by the
6 12 telephone solicitor to the consumer in connection with
6 13 the transaction.

6 14 This section does not apply to contractual sales
6 15 specifically regulated by other law, or to the sale of
6 16 financial services, security sales, or sales
6 17 transacted by insurance companies or their wholly
6 18 owned subsidiaries or agents, or to the sale of cable
6 19 television services to a franchised cable television
6 20 operator's existing subscribers within that cable
6 21 television operator's franchise area, or to any sales
6 22 where no prior payment is made to the merchant and an
6 23 invoice accompanies the goods or services allowing the
6 24 consumer no less than seven days to cancel or return
6 25 the goods or services without obligation for any
6 26 payment.

6 27 Sec. 6. NEW SECTION. 476B.6 RESTRICTIONS ON
6 28 CHARGES TO CREDIT CARD ACCOUNTS AND ELECTRONIC
6 29 TRANSFERS OF FUNDS.

6 30 1. A merchant who engages a telephone solicitor to
6 31 make or cause to be made a telephone solicitation
6 32 shall not make or submit any charge to a consumer's
6 33 credit card account or make or cause to be made any
6 34 electronic transfer of funds until after the merchant
6 35 receives from the consumer a copy of the contract,
6 36 signed by the consumer, that complies with section
6 37 476B.5.

6 38 2. This section does not apply to any of the
6 39 following:

6 40 a. A transaction made pursuant to prior
6 41 negotiations in the course of a visit by the consumer
6 42 to a merchant operating a retail business
6 43 establishment which has a fixed permanent location and
6 44 where consumer goods are displayed or offered for sale
6 45 on a continuing basis.

6 46 b. A transaction in which the consumer may obtain
6 47 a full refund for the return of undamaged and unused
6 48 goods or a cancellation of services by notice to the
6 49 seller within seven days after receipt by the
6 50 consumer, and the seller will process the refund
7 1 within thirty days after receipt of the returned
7 2 merchandise by the consumer.

7 3 c. A transaction in which the consumer purchases
7 4 goods or services pursuant to an examination of a
7 5 television, radio, or print advertisement or a sample,
7 6 brochure, or catalog of the merchant that contains all
7 7 of the following:

7 8 (1) The name, address, and telephone number of the
7 9 merchant.

7 10 (2) A description of the goods or services being
7 11 sold.

7 12 (3) Any limitations or restrictions that apply to
7 13 the offer.

7 14 d. A transaction in which the merchant is a bona
7 15 fide charitable organization or a newspaper.

7 16 Sec. 7. NEW SECTION. 476B.7 PREPAID CALLING
7 17 CARDS DISCLOSURES REQUIREMENTS.

7 18 1. A prepaid calling card company shall provide
7 19 all of the following information about the prepaid
7 20 calling services in a prominent area at the point of
7 21 sale of the prepaid calling services, legibly and
7 22 visibly printed on the card, packaging, or display in
7 23 such a manner that the consumer may make an informed
7 24 decision about the prepaid calling services prior to
7 25 purchase:

7 26 a. The maximum charge per minute for the prepaid
7 27 calling services.

7 28 b. All applicable surcharges.

7 29 c. The expiration policy for the prepaid calling
7 30 services, if applicable.

7 31 The company shall insure by contract with its
7 32 retailers or distributors that the information is
7 33 provided to the consumer.

7 34 2. A prepaid calling card company shall legibly
7 35 print all of the following information on the prepaid
7 36 calling card:

7 37 a. The name of the prepaid calling card company,
7 38 as registered with the secretary of state.

7 39 b. A toll-free customer service number.

7 40 c. A toll-free network access number.

7 41 d. The authorization code, if such a code is
7 42 required to access telecommunications service.

7 43 3. A prepaid calling card company shall provide
7 44 all of the following information and services through
7 45 its customer service number:

7 46 a. Rates and surcharges.

7 47 b. Balance of use in account.

7 48 c. Expiration date or period, if applicable.

7 49 d. A live operator to answer incoming calls
7 50 twenty-four hours a day, seven days a week, or
8 1 electronic voice recording of consumer messages. A
8 2 combination of live operators or recorders may be
8 3 used. If a recorder is used, the company shall
8 4 attempt to contact each consumer no later than the
8 5 next business day following the date of the recording.

8 6 4. A prepaid calling card company shall use the
8 7 following billing standards:

8 8 a. A prepaid calling card company shall only
8 9 charge a consumer for conversation time used plus
8 10 applicable surcharges.

8 11 b. The billing increment used by a prepaid calling
8 12 card company shall not exceed one minute.

8 13 c. Conversation time of less than a full minute
8 14 shall not be rounded up beyond the next full minute.

8 15 5. Cards that do not have a specific expiration
8 16 period printed on the card, and that have a balance of
8 17 service remaining, shall be considered active for a
8 18 minimum of one year from the date of first use, or if
8 19 recharged, from the date of the last recharge.

8 20 6. A prepaid calling card company shall have a
8 21 refund policy that meets all of the following minimum
8 22 requirements:

8 23 a. For prepaid calling services that are rendered
8 24 unusable for reasons beyond the consumer's control,
8 25 and have not exceeded the expiration period, a prepaid
8 26 calling card company shall provide a refund equal to
8 27 the value remaining in the account.

8 28 b. Each company may, but shall not be required to,
8 29 provide a refund when a card has been lost or stolen.

8 30 c. Refunds may be cash or replacement service, at
8 31 the prepaid calling card company's option, but must be
8 32 made to the consumer within sixty days of the request
8 33 for a refund by the consumer.

8 34 7. All cards sold by a prepaid calling card
8 35 company in Iowa after July 1, 2001, shall comply with
8 36 this section.

8 37 Sec. 8. NEW SECTION. 476B.8 INVESTIGATIONS
8 38 CIVIL ACTIONS CIVIL PENALTY OTHER REMEDIES.

8 39 1. A violation of this chapter is a violation of
8 40 section 714.16, subsection 2, paragraph "a". All the
8 41 powers conferred upon the attorney general to
8 42 accomplish the objectives and carry out the duties

8 43 prescribed pursuant to section 714.16 are also
8 44 conferred upon the attorney general to enforce this
8 45 chapter, including, but not limited to, the power to
8 46 issue subpoenas, adopt rules pursuant to chapter 17A
8 47 which shall have the force of law, and seek injunctive
8 48 relief and civil penalties.

8 49 2. In seeking reimbursement pursuant to section
8 50 714.16, subsection 7, from a person who has committed
9 1 a violation of this chapter, the attorney general may
9 2 seek an order from the court that the person pay to
9 3 the attorney general on behalf of consumers the
9 4 amounts for which the person would be liable under
9 5 section 476B.8, subsection 2, for each consumer who
9 6 has a cause of action pursuant to section 476B.8,
9 7 subsection 2. Section 714.16, as it relates to
9 8 consumer reimbursement, shall apply to consumer
9 9 reimbursement pursuant to this section.

9 10 Sec. 9. NEW SECTION. 476B.9 PRIVATE CAUSE OF
9 11 ACTION DAMAGES AND INJUNCTIVE RELIEF.

9 12 In addition to any other remedies, a consumer who
9 13 receives more than one telephone solicitation within
9 14 any twelve-month period by or on behalf of the same
9 15 person in violation of any provision of this chapter
9 16 may bring an action against the person to recover all
9 17 of the following:

9 18 1. Preliminary and permanent injunctive relief
9 19 necessary to protect the public against further
9 20 violations.

9 21 2. The greater of actual monetary damages or a sum
9 22 not less than one hundred dollars but not more than
9 23 two thousand dollars for each telephone call made in
9 24 violation of this chapter.

9 25 3. Costs and reasonable attorney fees.

9 26 Reimbursement awarded to the attorney general
9 27 pursuant to section 714.16, subsection 7, on behalf of
9 28 a plaintiff who has filed an action pursuant to this
9 29 section concerning the same set of facts shall be
9 30 deducted from any damages awarded to the plaintiff in
9 31 an action filed under this section.

9 32 Sec. 10. NEW SECTION. 476B.10 NOTIFICATION OF
9 33 RIGHTS.

9 34 The board shall by rule ensure that
9 35 telecommunications providers inform their customers of
9 36 the customers' rights under this chapter. The
9 37 notification shall be made by at least both of the
9 38 following:

9 39 1. Annual inserts in the billing statements mailed
9 40 to customers.

9 41 2. Conspicuous publication of the notice in the
9 42 consumer information pages of the local telephone
9 43 directories.

9 44 Sec. 11. Section [476.57](#), Code 2001, is repealed."

9 45 #2. Title page, by striking lines 1 through 12 and
9 46 inserting the following: "An Act relating to
9 47 telemarketing."

9 48 #3. By renumbering as necessary.

9 49

9 50

10 1

10 2 [SCHRADER](#) of Marion

10 3 [HF 577.5](#)18 79

10 4 jj/pj